



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

June 29, 1976

REFERENCES

OMB Declassification & Release Instructions on File - No Referral to OMB

STATINTL

Mr. [REDACTED]
Chief, Procurement Management Staff
Office of Logistics
Central Intelligence Agency
Washington, D. C. 20505

STATINTL

Dear Mr. [REDACTED]

We are in the process of analyzing the comments received on our proposed Federal Procurement Regulatory System (FPRS), Regulation No. 1 of the Office of Federal Procurement Policy (OFPP). The Central Intelligence Agency (CIA) comments dated March 2, 1976, signed by Mr. John F. Blake, make reference to our meeting on February 24, but do not adequately cover the matters discussed at that meeting, particularly the basis for CIA's request for exemption from the Federal Procurement Regulations (FPR), published by the General Services Administration (GSA), and authority to follow, instead, the Armed Services Procurement Regulation (ASPR).

It was our understanding that, in addition to its general comments, CIA was going to prepare a draft letter requesting exemption from certain specific requirements of our Regulation No. 1, and that we would get together and go over it before its formal submission. Likewise, we would discuss our proposed reply before putting it in final form. We do not anticipate any problem in working out a mutually satisfactory arrangement, but it is necessary to establish a formal record covering the matter.

Accordingly, you should submit a specific request for exemption along the lines discussed at our February 24 meeting. Your request should include:

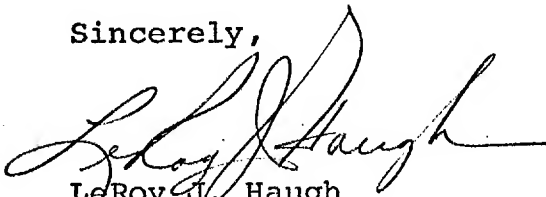
- ° A discussion of the statutory basis upon which you request exemption, plus a discussion of pertinent Executive orders. (E.O. numbers, dates, and what they do.)

- Description of present practice and how it is closely related to DOD procurement procedures and ASPR.
- Examples or discussion of necessary variances from ASPR (unclassified).
- Describe what review and oversight procedures are in effect to ensure that proper procurement practices are followed. What checks and balances are there?
- Enumerate the specific exemptions sought from OFPP.
- Unclassified examples of CIA procurement regulations, if any.

Enclosed for information is a copy of a letter from the Tennessee Valley Authority (TVA). Since TVA is also in a rather unique category from a procurement standpoint, its submission may provide some guidance.

If you have any question or want to discuss this matter, please call me on 395-6186.

Sincerely,



LeRoy J. Haugh
Assistant Administrator
for Regulations

Enclosure



TENNESSEE VALLEY AUTHORITY

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February 27, 1976

Mr. Hugh E. Witt
Administrator for Federal Procurement Policy
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Dear Mr. Witt:

This is in response to your memorandum of December 22, 1975, requesting our views on the draft Office of Federal Procurement Policy (OFPP) Regulation No. 1. Inasmuch as the proposed regulation applies only to procurement payable from appropriated funds (consistent with Section 6(c) of the Office of Federal Procurement Policy Act), the regulation would affect only a small portion of TVA's procurements. In commenting on the potential effect the draft regulation would have on TVA, we feel it is desirable to review briefly the basic nature of TVA and TVA's procurement activities.

TVA was created in 1933 as a corporate instrumentality and agency of the Government of the United States "charged with the broadest duty of planning for the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and its adjoining territory for the general social and economic welfare of the Nation" (Message to Congress from President Roosevelt of April 10, 1933, H.R. Doc. No. 15, 73d Cong., 1st Sess. 1 (1933)). President Roosevelt's message to Congress also stated that TVA should be "possessed of the flexibility and initiative of a private enterprise."

The situation with respect to TVA's procurement of supplies and non-personal services differs from that of Government agencies in general. TVA was created to conduct a unified program of regional development. The TVA Act placed broad responsibilities on TVA and the TVA Board of Directors which relate to improvement of the navigability of the Tennessee River and its tributaries, flood control, reforestation, marginal land development, agricultural and industrial development, and the generation and distribution of electricity. In discussing the scope of responsibility and authority placed upon the TVA Board of Directors, the Conference Report on the original TVA Act stated:

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We are fully persuaded that the full success of the Tennessee Valley development project will depend more upon the ability, vision, and executive capacity of the members of the board than upon legislative provisions. We have sought to set up a legislative framework, but not to encase it in a legislative straitjacket. We intend that the corporation shall have much of the essential freedom and elasticity of a private business corporation. We have indicated the course it shall take, but have not directed the particular steps it shall make [H.R. Rep. No. 130, 73d Cong., 1st Sess. 19 (1933); emphasis added].

Accordingly, TVA as a corporate agency of the Federal Government, operates with a substantial degree of the autonomy and flexibility of a private corporation. All powers of TVA are vested in a three-man Board of Directors. To carry out the responsibilities placed on TVA under the TVA Act, Congress granted the TVA Board broad authority to conduct these programs in a manner which the Board determines is best suited to accomplish the purposes of the Act. Inherent in the legislative framework of the Act is the Board's responsibility and authority to act fully and finally with respect to all functions contained therein.

The cost of materials and equipment needed for TVA's program, the cost of the acquisition process, the scheduling of deliveries, and the policies and procedures for the conduct of TVA's regional development programs are of primary importance to the TVA Board in the discharge of its responsibilities under the TVA Act. Property and supplies needed in connection with TVA's programs must be acquired on a basis consistent with construction, manufacturing, and operating schedules, and procurement and property officers must work closely with the operating division responsible for the programs. All TVA contracts for materials and services are made in TVA's name rather than in the name of the United States, and any actions in the courts involving such contracts are brought by or against TVA directly.

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The great bulk of TVA's procurement is for supplies, equipment and nonpersonal services needed for the construction, maintenance, and operation of its electric power system, and is payable from non-appropriated funds. TVA's power system, the largest electric system in the United States, is financed from power revenues and the proceeds of bonds sold by TVA in the private capital markets. Such bonds are backed solely by revenues from TVA power sales and are neither obligations of nor guaranteed by the United States. In its Basic Bond Resolution, adopted pursuant to the provisions of Section 15d of the TVA Act, TVA has covenanted with its bondholders that it will at all times "conduct its power operations in a sound and economical manner." In recent years, approximately 95 percent of TVA's procurement has been made with nonappropriated funds. In fiscal year 1975, of the total of \$3.8 billion expended by TVA for materials, equipment, supplies, and nonpersonal services, approximately 98 percent was for the power program. Since it is a virtual certainty that only a small portion of TVA's procurement will continue to be payable from appropriated funds, the draft regulation would be applicable to a very low percentage (5 percent or less) of TVA's procurement.

The basic nature of TVA causes TVA's procurement functions and responsibilities to be unique in the Federal Government. Because the vast majority of TVA's procurement would not be affected by the proposed regulation, we believe that it would be extremely burdensome and highly inefficient for TVA to perform a small portion of its procurement activities under a set of procurement regulations which may be different in certain material respects from the system deemed appropriate by the TVA Board. Since Sections 6(a) and (d) of the Office of Federal Procurement Policy Act give the Administrator broad discretion in establishing procurement policies and regulations, we believe that it would be appropriate, in view of the foregoing, to exclude TVA from the proposed regulation with the proviso that TVA conduct its appropriated fund procurement in accordance with the provisions of the proposed regulation to the maximum extent that it may deem practicable, consistent with its program under the TVA Act. Accordingly, we recommend and urge that the following section be added to the draft of OFPP Regulation No. 1:

11. Purchases made by the Tennessee Valley Authority in accordance with Section 9(b) of the Tennessee Valley Authority Act of 1933, 48 Stat. 58, as amended, 16 U.S.C. §§ 831-831dd (1970; Supp. IV, 1974), shall not be subject to this

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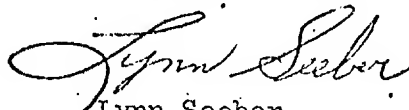
Regulation No. 1; provided, that the Tennessee Valley Authority shall to the maximum extent that it may deem practicable, consistent with the fulfillment of the purpose of its program and the effective and efficient conduct of its business, conduct all procurement payable from appropriated funds in accordance with this Regulation No. 1.

In reporting the original bill (S. 2510) which eventually resulted in the Office of Federal Procurement Policy Act, the Senate Committee on Government Operations stated:

It is not intended that the authority of the Tennessee Valley Authority (TVA) granted by Section 602(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474) be interfered with by this Act. There was a provision in S. 2510 when it was introduced on October 1, 1973, that would have repealed Section 602(d) of the FPASA. This was deleted by the committee as an expression of intent that TVA not be covered by S. 2510 [S. Rep. No. 93-692, 93d Cong., 2d Sess. 17 (1974)].

We believe that the above recommended change would be consistent with the stated intent of the Senate in passing the Office of Federal Procurement Policy Act, the purposes of the TVA Act, and the declaration of congressional policy in Section 2 of the Office of Procurement Policy Act to promote economy, efficiency, and effectiveness in the procurement of property and services.

Sincerely yours,


Lynn Seeber
General Manager

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